



Minister Martinus Van Schalkwyk
Environmental Affairs and Tourism

19 November 2007

POLICY FORMULATION: ELEPHANTS IN CAPTIVITY

Honourable Minister,

The recent unjustified perversion of the Elephant Norms and Standards process by DEAT and the Minister has made a mockery of the public participation process you initiated, and has broken the promises made to stakeholders. Worse still, it is not only irresponsible and has wasted resources and public funds, but it is undermining and subverting the legitimacy of the entire public consultation process and has placed it in profound jeopardy.

For DEAT and the Minister to do such a complete turn around by claiming that the process to determine the fate of elephants in captivity is not their mandate, but can only be authorised by the Department of Agriculture (DOA), is totally unjustifiable and unfathomable. Particularly within the context of public statements made by the Elephant Trainers Association (ETA) at the public meeting on the 12th November 2007 which indicate that they have no intention of putting their own codes of conduct and protocols through any consultative or public stakeholder process. Indeed, they have made it clear

that it is their intention to select who is involved in, and would have access to, their facilities and activities.

DEAT and the Minister are abdicating their responsibilities and are being completely untransparent and unaccountable to the stakeholders because they have failed to provide any proper legal reasons for making this decision other than a vague statement that they have been advised that the issue of elephants in captivity is “not their mandate”. Moreover, DEAT and the Minister have perplexingly chosen to ignore the Legal Opinion obtained by EKZN Wildlife which provides a strong mandate for DEAT and the Minister to take a “duty of care” position.

It is clear that DEAT and the Minister are attempting to side-step a perceived “difficult issue” as well as their accountability and liability to deal with it in a responsible and creative way. Animal Rights Africa (ARA) is under no illusion that this is not an easy problem to solve, but surely DEAT and the Minister cannot now suddenly shy away from it by trying to shirk their responsibility and hide behind an illegitimate claim of “it is not our mandate”?

The reality is that there is absolutely no legal reason why DEAT and the Minister cannot continue to formulate policy on this issue. Indeed, there are an overwhelming number of reasons why the Minister **MUST** continue to drive the process and do what needs doing. This is because:

- There will be an international outcry if captive elephants are not dealt with in a trusted and effective way.
- The revision by DEAT of the N&S in no way reflected the outcome of the working group meeting on the 8th November 2007 – in fact it has totally undermined it.
- It is abrogating its legal and moral responsibility as DEAT and the Minister were the entities that began a policy review process on elephant management.
- This is an environmental issue and falls directly within DEAT’s mandate in terms of NEMBA and TOPS.

- The elephant back safari “industry” is a so-called tourism industry and therefore is DEAT’s domain.
- The problem of elephants in captivity and training was created by DEAT, as it has provided and approved permits, and continues to provide permits for this activity. Consequently it must be resolved by DEAT.
- It is perfectly legitimate for DEAT and the Minister to act within the framework of existing and relevant legislation which considers elephant training and taming to be a criminal offence. One such example is the Animal Protection Act which states that it is cruel and an offence to tether, chain or beat and that the training and managing of elephant for human entertainment cannot be considered necessary.
- Indisputable scientific input by world-renowned and respected experts is being deliberately ignored.
- It is plainly a skewed action solely in support of perpetuating the industry.
- It is disingenuous because it is trying to place the onus and responsibility elsewhere because it knows that this industry can never be regulated or adequately policed and monitored.
- It places captive elephants at risk and will perpetuate cruelty against elephants.

The only alarming conclusions that can be drawn from this complete about-turn are that DEAT and the Minister:

- Have been given skewed legal advice. Clearly the question to DEAT’s legal council was NOT “find ways in which we can keep captive elephants in our mandate”.
- Have deliberately ignored scientific input from the evidence and information-based Working Group.
- Are allowing the drafting of the N&S for a protected species to be unethically exploited for greed under the guise of tourism.
- Are not willing to address the fate of a protected species for which they issue permits.
- Are being disproportionately influenced by the captive elephant industry.

- Do not want to restrict or prohibit the training of elephants and are obviously not committed to preventing, combating or eradicating this unethical and cruel industry.

It is simply not enough for Minister Van Schalkwyk to abrogate an already embarked upon process merely by writing a "Dear Colleague" letter to the Minister of Agriculture to try and get **yet another** process moving. This is also particularly alarming because the DOA is not qualified to deal with animal welfare issues, does not have a section or individual who takes responsibility for animal welfare issues and, where animal welfare is merely outsourced to under-resourced NGOs.

ARA is aware that the ETA has been lobbying strongly to have this issue moved to the DOA because this is where ETA carries favour, has strong support and where the "industry" will be defended and shielded. Has pressure been placed on certain DEAT employees by the ETA to push for the elephants in captivity issue to be sent to the DOA? Have deals and trade-offs been made with ETA outside of the open consultation process? Have threats by the ETA that the Minister will face legal action pressurised the Minister into unethical deal making or compromise?

Is the Minister aware that nationally there are moves afoot to turn the responsibility of wild animals over to the DOA in the context of farming them and thereby altering their status in terms of existing biodiversity legislation? Is DEAT going to support a situation where all wild animals outside of protected areas will have no protection and will be "farmed"?

Ultimately, the buck stops at the door of the Minister. It is the Minister who has to take responsibility for captive elephant welfare policy formulation. By giving in to the ETA lobby, pandering to a minority stakeholder in this way and failing to deal with the issue appropriately, the Minister has shown his hand. No other conclusion can be drawn other than that the Minister supports the elephant training industry and wants it to continue. As a result, it is the Minister who will be held responsible for cruelty to

elephants and any future damages claims from the bereaved families of dead handlers and tourists. Moreover, although ARA, its overseas partners and the supporting local and global public will be targeting the “industry”, we will have no other choice but to focus our campaigns more broadly.

Apart from all the points discussed above there are other further negative consequences to this turn-about decision:

- DEAT and the Minister are harming the entire image of South Africa and the South African tourism industry.
- The elephant industry has now been given an opportunity to increase the number of captive, trained elephants while policy is being shifted from one department to another.

ARA believes it has made a compelling case to the Minister and is therefore appealing to the Minister to reconsider his current decision and not separate out this issue from the broader elephant management policy process. Instead of absolving themselves of the responsibility, DEAT and the Minister must take their already embarked upon process forward. Surely there is no pressing urgency for the process to be completed by the beginning of this coming December, so even if there are delays to the policy process by a month or so, at least it will be a legitimate process. If the elephant management policy is pushed through hastily in this way it will be at the expense of proper process and of a cogent and worthwhile policy document.

ARA is therefore urgently requesting that:

- The Norms & Standards be put on hold until the process is properly extended and dealt with as per our suggestions above.
- That an immediate moratorium be placed on the issuing of permits for the capturing and training of elephant.
- A ban be placed on all capture of any elephants from the wild, and should include the prohibition of the capture of so-called “problem” elephants,

“vagrant” elephants and the removal of live elephant from “culls” or from free living families, herds and clans.

ARA does not support the Norms and Standards on captive elephants as they currently stand and, if this situation is not rectified as a matter of urgency we will be left with no other choice but to take legal action to protect elephants from further exploitation and cruelty.

Given the pressing nature of the current situation we look forward to your urgent response.

Yours sincerely,

Michele Pickover (Trustee)

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